IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL Nos. 2639 to 2652 of 2004
With
CROSS-OBJECTIONS (STAMP) No.131 to 144 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GENERAL MANAGER - Appellant
Versus
HEIR OF KHODABHAI VISHRAMBHAI SUTHAR HASMUKHBHAI KHODABHAI & 2 - Respondents

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Appearance :
MR RR MARSHALL for Appellant in all appeals.
MR AJ PATEL for Respondent-1/claimants,in all appeals.
MR PATHIK ACHARYA, AGP for Respondents: 2 & 3 in First Appeal Nos.2639 to 2643 of 2004.
MR JASWANT K.SHAH, AGP for Respondents No.2 & 3 in First Appeal No.2644 to 2648 of 2004
MS BHAVIKA KOTECHA, AGP, for Respondent Nos.2 & 3 in First Appeal Nos.2649 to 2652 of 2004.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 04/07/2007

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

All these appeals filed under Section 54 of the Land Acquisition Act, 1894 [`the Act' for short] read with Section 96 of the Code of Civil Procedure, 1908, are directed against common judgment and award dated May 7, 2004, rendered by the learned Civil Judge (S.D.) Bharuch in Land Acquisition Reference Case Nos.2177 to 2190 of 1997, by which the claimants have been awarded additional amount of compensation at the rate of Rs.33/- per sq.mt. for their acquired lands over and above the compensation offered to them at the rate of Rs.2/- per sq.mt. by the Special Land Acquisition Officer vide Award dated April 11, 1997.

2. The General Manager, Oil and Natural Gas Corporation Ltd., Ankleshwar proposed to the State Government to acquire certain parcels of land of village Denva, Taluka : Amod, District :

Bharuch for the public purpose of construction of Gas Gathering Station at Gandhar to be set up by O.N.G.C. and construction of approach-road thereto. On consideration of the same, the State Government was satisfied that the lands of village Denva mentioned therein were likely to be needed for the said public purpose. Therefore, notification under Section 4 of the Act was issued, which was published in the Official Gazette on April 30, 1994. The owners, whose lands were proposed to be acquired, were served with notices and an inquiry was conducted as required by law. On conclusion of inquiry, report as contemplated by Section 5A(2) of the Act was forwarded by the Special Land Acquisition Officer to the State Government. On the basis of the said report, a declaration under Section 6 of the Act was made, which was published in the Official Gazette on April 15, 1995. The interested persons were thereafter served with notices for determination of compensation payable to them. Accordingly, the claimants appeared before the

Special Land Acquisition Officer and claimed compensation at the rate of Rs.50/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer by his Award dated April 11, 1997 offered compensation to them at the rate of Rs.2/- per sq.mt. The claimants were of the opinion that the offer of compensation made to them was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determining just amount of compensation payable to them. Accordingly, references were made to the District Court at Bharuch, where they were registered as noticed earlier.

3. On behalf of the claimants, witness Devdattbhai Ishwarbhai Vasava was examined at Exh.34. After giving particulars of the lands acquired, the witness mentioned before the Court that the lands acquired were highly fertile and

that each claimant was able to raise 20 to 22 quintals of cotton per Acre, which was being sold to Bharuch District Co.op. Cotton Sale, Ginning and Processing Society Ltd. as well as Vilayat Group Co.op. Agricultural Produces Processing and Marketing Society Ltd. Derol. The witness maintained that from the sale of cotton, each claimant was able to earn net income of Rs.23,200/- to Rs.25,400/- per Acre per year. The witness also stated before the Court that in other seasons, the claimants were growing juvar, from the sale of which they were earning net income of Rs.8,000/- to Rs.10,000/- per Acre. In support of his claim that the lands acquired were highly fertile, the witness produced copy of Village Form 7/12 at Exhs.24 to 27. The witness further maintained before the Court that village Chanchvel was situated at a distance of half a kilometer from his village Denva, and that the boundaries of both the villages were common. In order to substantiate this claim, the witness produced map at Exh.33. The witness further

mentioned before the Court that lands of village Chanchvel were acquired for the public purpose of Central Process Facility at Gandhar Complex, for which notification under Section 4 of the Act was published in the Official Gazette on July 8, 1990. According to the said witness, in those cases also less amount of compensation was offered by the Special Land Acquisition Officer and, therefore, the claimants had sought references, as a result of which, the learned Civil Judge (S.D.) Bharuch had awarded compensation to the claimants of those cases at the rate of Rs.25/- per sq.mt. To support this claim, the witness produced previous award of the Reference Court relating to the lands of village Chanchvel at Exh.28. According to this witness, feeling aggrieved by the aforesaid award, O.N.G.C. had filed First Appeal Nos. 1230 to 1238 of 2000, which were dismissed by the High Court. To substantiate this claim, the witness produced certified copy of the judgment of the High Court at Exh.29. The witness further mentioned before

the Court that feeling aggrieved by the judgment of the High Court, O.N.G.C. had filed petitions for Special Leave to Appeal (Civil) Nos.7570-7578/2001 before the Supreme Court, but, the Supreme Court had also dismissed the same. To support this claim, the witness produced a copy of the order passed by the Supreme Court at Exh.32. The witness asserted in no uncertain terms before the Court that the lands which were acquired from village Chanchvel were similar in all respects, including fertility, to the lands acquired in the instant cases. According to this witness, village Rozatankariya was situated at a distance of one kilometer from his village Denva and that the lands of village Rozatankariya were also acquired for the public purpose of Central Process Facility, Gandhar pursuant to publication of notification issued under Section 4(1) of the Act in the Official Gazette on April 5, 1990. The witness informed the Court that in those cases, award under Section 11 of the Act was made by the Special Land Acquisition Officer on February 26,

1993 and that the claimants were offered compensation at the rate of Rs.3/- per sq.mt. According to this witness, feeling aggrieved, the claimants, whose lands were acquired from village Rozatankariya, had sought references and accordingly, references were made to the District Court, Bharuch. The witness stated that the Reference Court had granted additional amount of compensation to the claimants in those cases at the rate of Rs.22/- per sq.mt. To substantiate this claim, the witness produced previous award of the Reference Court relating to the lands of village Rozatankariya at Exh.30. The witness further informed the Court that feeling aggrieved by the said award, O.N.G.C. had filed First Appeal Nos.3108 to 3122 of 2000, which were dismissed by the High Court vide judgment dated November 27, 2000. To support this claim, the witness produced copy of judgment of the High Court delivered in First Appeal Nos.3108 to 3121 of 2000 with First Appeal Nos.3122 to 3132 of 2000 at Exh.31. The witness also informed the

Court that feeling aggrieved, O.N.G.C. had approached the Supreme Court by filing petitions for Special Leave to Appeal (Civil) Nos.7570-7578/2001, but, those petitions were dismissed by the Supreme Court. To substantiate this claim, the witness produced certified copy of the order passed by the Supreme Court at Exh.32. The witness in no uncertain terms maintained before the Court that the lands, which were acquired from village Rozatankariya were also similar, in all respects including fertility, to the lands acquired in the instant cases. According to this witness, lands acquired in the instant cases were situated quite near Amod-Dahej State Highway as well as Amod-Jambusar State Highway and that the area in the vicinity was fully developed.

4. Though this witness was cross-examined at length by the learned Counsel for the acquiring authorities, nothing substantial could be elicited, nor the assertion made by the witness that the lands, which were acquired earlier from

village Chanchvel and village Rozatankariya were similar, in all respects including fertility, to the lands acquired in the instant cases, could be demonstrated to be untrue.

5. Another witness examined on behalf of the claimants was Sanjaykumar Krushnkantbhai Patel at Exh.37. This witness was serving at Vagara Taluka Co.op. Marketing and Processing Ltd. and produced record indicating that the price of cotton per quintal during 1993-94 was Rs.1781/-, whereas the price of the same agricultural produce was Rs.1725/- during the year 1994-95.

6. Yet another witness examined on behalf of the claimants was Shivlal Kalidas Patel (Exh.39). At the relevant time he was serving in Bharuch District Co.op.Sales Ginning and Processing Ltd. Tralsa. This witness also produced documentary evidence to indicate that the price of cotton per quintal during 1996-97 was Rs.1711/-.

7. The claimants also examined witness Udesang Nagjibhai at Exh.41. However, examination of his testimony indicates that it is repetition of what was stated by the first witness examined by the claimants and, therefore, detailed reference to his testimony is avoided. What is relevant to notice is that this witness also asserted before the Court that the lands, which were acquired from village Chanchvel and village Rozatankariya were similar, in all respects including fertility, to the lands acquired in the instant cases. This witness was also cross-examined by the learned Counsel for the acquiring authorities, but, the assertion made by him that the lands, which were acquired from village Chanchvel and village Rozatankariya were, in all respects, similar to the lands acquired in the instant cases, could not be effectively challenged at all.

8. On behalf of the acquiring authorities, witness Jayendrasinh Mohansinh Puvar was examined

at Exh.52. The cross-examination of this witness indicates that he had no personal knowledge about the acquisition proceedings, which were initiated for acquiring lands from village Denva, nor he was conversant with the fertility of the lands acquired. However, the contents of paragraph 5 of his testimony make it very clear that the boundaries of villages Denva, Valipur & Chanchvel were touching each other, and that the Reference Court had awarded additional amount of compensation as asserted by the witness for the claimants. It was also admitted by this witness in paragraph 3 of his testimony that the lands acquired were irrigated lands and that the claimants were growing crops of cotton, juvar etc. thereon.

9. Yet another witness Hareshbhai Kanaiyalal Shah was examined on behalf of the acquiring authorities at Exh.53. Though several facts were mentioned by this witness in his examination-in-chief, no material facts were stated at all. He

had to admit hesitatingly in his cross-examination that he was not associated, in any manner, with the acquisition proceedings initiated for the purpose of acquiring lands from village Denva. This witness also admitted in his cross-examination that the boundaries of village Chanchvel and village Denva were common.

10. On appreciation of evidence adduced by the parties, the Reference Court was of the opinion that previous awards of the Reference Court relating to the lands of village Chanchvel and village Rozatankariya were comparable instances and furnished good guidance for the purpose of determining market value of the lands acquired in the instant cases. On the basis of appreciation of evidence adduced by the parties, the Reference Court has granted additional amount of compensation at the rate of Rs.33/- per sq.mt. by common judgment and award dated May 7, 2004, giving rise to the above-numbered appeals.

11. It may be mentioned that the claimants were of the opinion that the Reference Court should have awarded compensation to them at the rate of Rs.50/- per sq.mt. and, therefore, they have filed Cross-Objections (Stamp) Nos.131 to 144 of 2004.

12. This Court has heard Mr.R.R.Marshall, learned Counsel for the appellant as well as Mr.A.J.Patel, learned Senior Advocate for the claimant/s in each case, and Mr.Pathik Acharya, Mr.J.K.Shah and Ms.Bhavika Kotecha, learned Assistant Government Pleaders for the respondent Nos.2 & 3. This Court has also considered the paper-book supplied by the learned Counsel for the claimant/s, which includes oral as well as documentary evidence adduced by the parties before the Reference Court.

13. It is true that the witnesses examined on behalf of the claimants could not make good their

assertion that each claimant was roughly earning net income of Rs. 43,620/- to Rs.49,180/- per Acre per year from the sale of agricultural produces. However, the said fact pales into insignificance, as enhanced compensation was never claimed on yield basis. The record does not indicate that enhanced compensation was claimed by the claimants on the basis of comparable sale instances. The claimants had relied upon two previous awards to substantiate their claim that they were entitled to compensation at the rate of Rs.50/- per sq.mt. The previous award relating to the lands of village Chanchvel produced at Exh.28 indicates that the lands of village Chanchvel, Taluka : Vagara, District : Bharuch were acquired for the public purpose of Central Processing Facility, Gandhar pursuant to publication of notification issued under Section 4(1) of the Act in the Official Gazette on July 8, 1990. Therein, the Special Land Acquisition Officer by his award dated February 26, 1993 had offered compensation to the claimants at the rate of Rs.3/- per sq.mt.

Feeling aggrieved, the claimants had sought references. Accordingly, references were made to the District Court, Bharuch, where they were registered as Land Acquisition Case Nos. 1944/93 to 1952/93. In those cases, witness Musa Amad Patel was examined on behalf of the claimants at Exh.31. The award of the Reference Court rendered in those cases indicates that several other witnesses were also examined; whereas on behalf of the acquiring authorities, witness Shantilal Tribhovandas was examined at Exh.78. Initially, he maintained before the Court that just amount of compensation was offered to the claimants in those cases. However, in his cross-examination, he had to admit that he had no knowledge about the acquisition proceedings relating to village Chanchvel. On appreciation of evidence adduced by the parties, the Reference Court by common judgment and award dated November 29, 1999 granted additional amount of compensation to the claimants at the rate of Rs.22/- per sq.mt. Exh.29 produced by the claimants indicates that

feeling aggrieved by the above-mentioned award, the acquiring-body had filed First Appeal Nos.1230 to 1238 of 2000 and that the Division Bench had dismissed the same by judgment dated November 23, 2000. A perusal of Exh.30 makes it more than clear that the judgment of the High Court rendered in the above-numbered appeals was subjected to challenge before the Supreme Court and that the Supreme Court had rejected the petitions for Special Leave to Appeal by order dated August 27, 2000.

14. Again, perusal of Exh.30 indicates that lands of village Rozatankariya were acquired for the public purpose of Central Processing Facility at Gandhar pursuant to publication of notification issued under Section 4(1) of the Act in the Official Gazette on April 5, 1990. Therein, the Special Land Acquisition Officer by his award dated February 26, 1993 offered compensation to the claimants at the rate of Rs.3/- per sq.mt. Feeling aggrieved, references

were sought by the claimants. Accordingly, references were made to the District Court, Bharuch, where they were registered as Land Acquisition Cases Nos.1917/93 to 1930/93. In those cases, several witnesses were examined on behalf of the claimants; whereas on behalf of the acquiring authorities only one witness was examined i.e. Hareshchandra Kanaiyalal Shah at Exh.81. On appreciation of evidence adduced by the parties, the Reference Court by common judgment and award dated May 5, 2000 awarded additional amount of compensation to the claimants at the rate of RS. 22/- per sq.mt. A perusal of Exh.31 would show that the award of the Reference Court relating to the lands of village Rozatankariya was subjected to challenge by the acquiring-body before the High Court in First Appeal Nos.3108 to 3121 of 2000 and that those appeals were dismissed by the Division Bench of this Court by judgment dated November 27, 2000. A perusal of Exh.32 makes it more than evident that the judgment of the High Court

delivered in the above-numbered appeals was challenged in petitions for Special Leave to Appeal (Civil) Nos.7570-7578/2001 before the Supreme Court and those petitions were dismissed by the Supreme Court vide order dated August 27, 2001.

15. As noticed earlier, relevancy of the previous awards of the Reference Court relating to the lands of village Chanchvel and village Rozatankaria stands satisfactorily established by reliable testimony of the witnesses examined by the claimants. Those awards have attained finality on dismissal of petitions for special leave to appeal. It is well settled principle of law that the previous award of the Reference Court relating to lands of a village, which has attained finality, can be relied upon as good guidance for the purpose of determining market value of similar lands acquired subsequently from the adjoining village. Under the circumstances, this Court is of the opinion that the Reference

Court did not commit any error in placing reliance on two previous awards relating to the lands of village Chanchvel and Rozatankaria respectively for the purpose of determining market value of the lands acquired in the instant cases. The amount of compensation found payable to the claimants by the Reference Court on the basis of the previous awards of the Reference Court relating to the lands of village Chanchvel and village Rozatankaria is not in dispute before this Court in the instant appeals. On reappreciation of evidence adduced by the parties, this Court is of the opinion that correct findings of facts have been arrived at on appreciation of evidence to which well-settled principles of law have been applied. The learned Assistant Government Pleaders for the Special Land Acquisition Officer could persuade this Court to take a view different than the one taken by the Reference Court on appreciation of evidence adduced before it. The compensation awarded to the claimants cannot be treated to be

on higher side so as to warrant interference of this Court in the instant appeals. The net result of the above discussion is that the appeals filed by the acquiring-body have no substance and, therefore, will have to be dismissed.

14. For the foregoing reasons, all the appeals fail and are dismissed. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment immediately.

15. As noticed earlier, the claimants have filed cross-objections against the award impugned in the appeals for claiming higher compensation. However, the office-objections raised therein are not removed and, therefore, they are numbered as Cross-Objections (Stamp) Nos.131 to 144 of 2004. Those Cross-Objections are not pressed by the learned Counsel for the claimant/s on the basis of instructions received by him. Therefore, the Cross-Objections stand disposed of as not pressed.

[J.M.PANCHAL,J.] [SMT.ABHILASHA KUMARI,J.]